20050331-3062 Issued by FERC OSEC 03/31/2005 in Docket#: RP05-219-000

UNITED STATES OF AMERICA 110 FERC ¶ 61,405
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suedeen G. Kelly.

El Paso Natural Gas Company Docket No. RP05-219-000

ORDER REJECTING TARIFF SHEET

(Issued March 31, 2005)

1. On March 1, 2005, El Paso Natural Gas Company (El Paso) filed a revised tariff sheet[1] and a precedent agreement (PA) and related documents entered into with Southern California Gas Company (SoCalGas). El Paso requests that the Commission accept the PA and permit the tariff sheet to become effective April 1, 2005. As discussed below, the Commission will take no action on the PA and will reject the proposed tariff sheet as premature. This action will benefit the public because it will permit the Commission to address El Paso's non-conforming transportation service agreements (TSAs) in the appropriate procedural context.

Instant Filing

2. El Paso states that SoCalGas currently holds firm capacity rights on El Paso's system under a number of TSAs. Those TSAs, which represent approximately 1,300 MMcf/d of firm capacity rights, have expiration dates ranging from December 31, 2005 through March 31, 2007. Natural gas is transported from various receipt points on El Paso's system to primary delivery points along the California border. El Paso states that, after extensive discussions, El Paso and SoCalGas reached an agreement regarding the level and pricing of future transportation service by El Paso to SoCalGas after the expiration of the current TSAs. That agreement, in the form of the PA, provides for the execution of new TSAs upon receipt of necessary regulatory approvals and other conditions.

3. El Paso states that it is submitting the PA with the attached TSA form for the Commission's review and acceptance because the PA contains a continuing fuel provision, and the proposed TSA form contains a rate provision that may include potential material deviations and/or generally affect El Paso's rates for service.

[1] Fourth Revised Sheet No. 2 to FERC Gas Tariff, Second Revised Volume No. 1-A.

Fuel Provision

4. El Paso states that its currently effective rate case settlement at Docket No. RP95-363-000 includes a fuel adjustment mechanism that terminates on December 31, 2005. That fuel adjustment mechanism, in sections 26.3(b) and 26.4 of the General Terms and Conditions (GT&C), provides that San Juan East transactions are currently assessed a zero fuel rate.

5. El Paso states that in section 5.2 of the PA, El Paso confirms that in its next general rate case, it will file to eliminate any existing forward haul exemption that grants a zero fuel rate. The PA further states that El Paso has agreed that it will not enter into any new agreements with such exemptions for fuel charges. El Paso states that this provision survives the termination of the PA.

Precedent Agreement

6. El Paso states that the PA sets forth the terms and conditions under which El Paso will provide transportation service for SoCalGas under new TSAs beginning September 1, 2006. Under the new TSAs, SoCalGas will retain firm contract entitlements in the first three years averaging 750 MMcf/d.[2] The new TSAs will have varying terms of three to five years, with one seven-month TSA. The TSAs will have discounted rates (stated on a 100 percent load factor basis) of $0.275 and $0.32 per dth/d for service from San Juan Basin receipt points to the California border delivery points of Ehrenberg and Topock, respectively, and $0.16 per dth/d for service from Permian Basin receipt points to Ehrenberg.[3] The receipt and delivery point quantities in the new TSAs are derived from the receipt and delivery point quantities in SoCalGas's existing TSAs, with the exception of an additional 60 MMcf/d of San Juan Basin receipt point capacity to be obtained by SoCalGas. The PA provides for a detailed contract reformation process to effect the consolidation of receipt and delivery point quantities from SoCalGas's existing TSAs to its new TSAs.

7. According to section 3.1 of the PA, El Paso will post for competitive bidding the firm capacity underlying the new TSAs as a prearranged transaction with SoCalGas. El Paso will evaluate and award the capacity to the shipper bidding the highest rate for the total package of capacity, pursuant to section 28.10(b) of the GT&C (Option 3). As a prearranged shipper, SoCalGas will have the right to match any higher bid received. El Paso states that, if SoCalGas is the highest bidder, the parties will enter into new TSAs

[2] The remaining 550 MMcf/d will be turned back to El Paso by SoCalGas and posted as available capacity.

[3] The currently effective rate is $0.32977 per dth/d for service from the San Juan Basin to California delivery points and $0.34807 per dth/d for service from the Permian Basin to California delivery points.

in a form consistent with the currently effective Rate Schedule FT-1 Form of Service Agreement contained in El Paso's tariff.

8. El Paso states that the PA includes, as an attachment, an example of a Rate Schedule FT-1 TSA with blanks in paragraph 3.1(a) where the applicable rate is to be inserted. El Paso states that the rate provision provides that the contract discounts are subject to the applicable maximum tariff rates, so that if the maximum tariff rates for deliveries to California decrease below these discount rates in the future, SoCalGas will pay the applicable maximum tariff rates. El Paso states, however, that if the maximum rates do not decrease below the contract discount, the discount rates apply and are not subject to change under the TSAs' "Memphis" clause in paragraph 3.2. El Paso concludes that, since these TSAs will otherwise conform to the Form of Service Agreement, there will be no reason to submit them for Commission review.[4]

Public Notice and Protests

9. The filing was noticed on March 8, 2005, with comments, protests or interventions due on or before March 14, 2005. All timely motions to intervene and all motions to intervene out of time filed before the issuance of this order are granted pursuant to Rule 214 of the Commission's Rules of Practice and Procedure. Granting late intervention at this early stage of the proceeding will not disrupt the proceeding or place additional burdens on existing parties. Late motions to intervene were filed by Pacific Gas and Electric Company, Southern California Edison Company, Sempra Global Enterprises, and the Public Utilities Commission of the State of California. Southern California Gas Company and San Diego Gas & Electric filed joint comments.

10. Protests were filed by BP America Production Company and BP Energy Company (jointly BP); El Paso Electric Company, Phelps Dodge Corporation, and Texas Gas Service Company, a Division of ONEOK, Inc. (jointly El Paso Electric, *et al*.); the El Paso Municipal Customer Group (El Paso Municipals);[5] and Arizona Public Service Company and Pinnacle West Energy Corporation, Salt River Agricultural Improvement

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[4] El Paso notes that it will not be filing a section 7 application for permission and approval to abandon transportation service or related facilities because the transportation service to be turned back by SoCalGas is converted sales service (under TSA No. 97VT), and El Paso's tariff permits it, with the shipper's consent, to use its pre-granted abandonment authority in such cases.

[5] The El Paso Municipals include the following distributor-customers of El Paso: City of Mesa, Arizona; City of Safford, Arizona; City of Benson, Arizona; City of Willcox, Arizona; City of Las Cruces, New Mexico; City of Socorro, New Mexico; City of Deming, New Mexico; Town of Ignacio, Colorado; the Navajo Tribal Utility Authority; Graham County Utilities, Inc.; Duncan Rural Service Corporation; and Black Mountain Gas Company.

and Power District, and Southwest Gas Corporation (jointly Arizona Shippers).[6] The protestors generally request that the Commission reject the filing. The protestors argue that Commission approval of a precedent agreement is unnecessary; it is appropriate for the Commission to review non-conforming TSAs, not precedent agreements. Likewise, they argue, Commission approval of the fuel provision is not required, for there is no limitation on a new fuel adjustment mechanism in El Paso's next rate case. The protestors also raise numerous issues relating to the details of the agreement between El Paso and SoCalGas, in particular the discounted rate, the bid procedures, and the impact on El Paso's existing customers. The Arizona Shippers request a technical conference to discuss the issues.

Discussion

11. The Commission is rejecting the tariff sheet and will take no action on the PA. As explained above, El Paso gives two reasons for seeking Commission review and approval of the PA. First, El Paso states that under section 5.2 of the PA, it has agreed that in its next rate case, it will file to eliminate its existing and future exemptions that result in a zero fuel retention rate for forward haul transactions.

12. It is not necessary for the Commission to grant prior approval for El Paso to file fuel charge provisions in its next rate case. Under section 4 of the Natural Gas Act, El Paso may file to change the fuel charge or any other provision of its tariff in that rate case and then must carry the burden of proof to justify its proposed changes. Commission approval prior to the filing is not required and could be viewed as eliminating El Paso's burden in the rate case to justify its proposal. It is also not clear why El Paso would include a provision that affects all shippers in a bilateral precedent agreement with one shipper. For these reasons, the Commission will not now address the fuel charge proposal El Paso may make in its next rate case.

13. Second, El Paso states that it is submitting the PA for approval because "the attached TSA form contains a rate provision that may require Commission review (as potential material deviations and/or affecting El Paso's rates for service generally)." This request is broad and unspecific and does not make clear exactly what El Paso wants the Commission to approve. The TSAs provide for discounted rates for SoCalGas. To the extent that El Paso is seeking approval for the discounted rates it intends to charge SoCalGas, the request is unnecessary. The Commission does not give prior approval to discounted rates. Pipelines are free to grant discounts to customers between the minimum and maximum rate on file on a nondiscriminatory basis. However, under the Commission's discount policy, the burden is on the pipeline to justify any discounts to receive a discount adjustment in a rate case. El Paso will bear this burden in its next rate case and cannot seek prior approval of these discounts in order to avoid its burden.

[6] El Paso and SoCalGas filed answers to the protests. Answers to protests are not permitted by the Commission's rules, 18 C.F.R. § 385.213(a)(2), and the Commission has not considered these answers.

Further, if any of El Paso's customers believe that the discount given to SoCalGas is discriminatory, they may file a complaint and may argue that they are entitled to a similar discount.

14. If a pipeline enters into an agreement with a shipper that contains provisions that deviate from the form of the TSA in the tariff, the non-conforming TSA must be filed with the Commission and the non-conforming provisions of the TSA must be identified. It is unnecessary for El Paso to file a PA for pre-approval of nonconforming provisions in as yet unexecuted TSAs.[7] El Paso has indicated that it will post the capacity underlying the new TSAs for competitive bidding in accordance with section 28.14 of its GT&C and that, if SoCalGas is the highest bidder, the parties will enter into new TSAs. At that time, if the TSAs contain non-conforming provisions, El Paso should file such TSAs, specifying any provisions that do not conform to the currently effective form of service agreement contained in El Paso's tariff. The Commission would then review the non-conforming provisions in the TSAs to determine whether they constitute permissible deviations from the form of service agreement. Accordingly, El Paso's request here is premature. The Commission will take no action on the PA and rejects the proposed tariff sheet.

The Commission orders:

(A) The proposed tariff sheet is rejected.

(B) No action is taken on the precedent agreement.

By the Commission.

(S E A L)

Linda Mitry,
Deputy Secretary.

[7] *Northwest Pipeline Corp.*, 106 FERC ¶ 61,174 at P 45 (2004).